STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

W. Mauldin Smith	)	
	)	
v.	)	**Docket 08-0474**
	)	
Illinois Bell Telephone Company	)	
	)	
Complaint as to whether the disconnection of a business number that existed more than 30 years was justified under Illinois law and the facts of this case in Chicago, Illinois	)))	

INITIAL BRIEF OF ILLINOIS BELL TELEPHONE COMPANY

W. Mauldin Smith ("Mr. Smith" or the "Complainant") filed a formal complaint (the "Complaint") against Illinois Bell Telephone Company ("AT&T Illinois") on August 8, 2008, asserting that AT&T Illinois improperly disconnected his business line after he failed to pay past-due amounts owed on his business account. AT&T Illinois submits this brief following the evidentiary hearing on the Complaint.

FACTS

Complainant's Business Account

Mr. Smith is an African-American male (Tr. 37:18)[1] who has two accounts with AT&T Illinois: a residential account and a business account (*see* Tr. 58:21-59:1; Tr. 60:2-4). Only the business account, Account No. 312 263-2980 5853, is at issue here. The only service provided on the business account was a forwarding service, which sent calls that were made to telephone number (312) 263-2980 to a different telephone number for completion. Tr. 59:2-21.

[1] In this brief, references to the transcript of the November 20, 2008 evidentiary hearing in this case are indicated by "Tr." followed by the relevant page number(s), a colon, and the relevant line numbers. References to exhibits used at the evidentiary hearing are indicated by "AT&T Ex." or "Smith Ex." followed by the exhibit number.

In late 2007, Mr. Smith filed for Chapter 13 bankruptcy. Tr. 65:4-20; Tr. 75:16-21; *see also* AT&T Ex. 6C. This was approximately the tenth time Mr. Smith has filed for Chapter 13 bankruptcy in the last thirty years (Tr. 57:17-58:5), and the third time since 2006 (Tr. 64:5-22). Mr. Smith filed his most recent bankruptcy petition only a few months after his previous petition was dismissed by the bankruptcy court for failure to file proof that he had completed credit counseling. *See* AT&T Ex. 6B; *see also* Tr. 65:4-22.

When AT&T Illinois becomes aware that one of its customers, like Mr. Smith, is in bankruptcy proceedings, AT&T Illinois' practice is to place the customer's account on what it calls "no-treat status." When an account is on "no-treat status," AT&T Illinois does not "do any active collection on" that customer's account until after the bankruptcy court discharges the customer's debt or dismisses the bankruptcy petition. Tr. 77:16-21. During the "no treat" period, the customer still receives his or her bill, but AT&T Illinois does not send disconnection notices or make collection calls to the customer. Tr. 77:21-78:2. When a customer's bankruptcy petition is dismissed by the bankruptcy court, AT&T Illinois resumes normal collection activities – meaning that if a customer's account has a past-due balance, AT&T Illinois may send the customer a disconnection notice or make collection calls. Tr. 78:5-10.

AT&T Illinois followed this standard process in treating Mr. Smith's business account. As Mr. Smith admitted at the evidentiary hearing, during the pendency of his most recent Chapter 13 bankruptcy case, he continued to receive bills for his business account, but AT&T Illinois did not actively try to collect on his overdue account (such as by sending him a disconnection notice). Tr. 43:4-8. Mr. Smith let the past-due balance on his business account build up; by July 2008, he owed over $400 in past-due charges. *See* AT&T Ex. 2.

The Disconnection Notice

In July 2008, AT&T Illinois determined that Mr. Smith's bankruptcy petition had been dismissed earlier in the year. *See* Tr. 75:16-21; Tr. 78:15-79:4. Accordingly, AT&T Illinois began to treat his business account as it normally would (Tr. 78:22-79:1) and sent Mr. Smith a Disconnection Notice informing him that, if AT&T Illinois did not receive payment of his past-due balance of $356.82 by July 15, 2008, his business line may be disconnected (*see* AT&T Ex. 3; Tr. 79:5-16).

AT&T Illinois' disconnection notices are automatically generated by computer "whenever there is a delinquent balance on any customer's account" (except, as discussed earlier, when an account is placed on "no-treat status"). Tr. 79:17-20. Mr. Smith's disconnection notice is dated July 4, 2008. AT&T Ex. 3; *see also* Tr. 79:14-16. Since July 4 was a holiday and a Friday, the notice "went out the next business day," July 7, 2008. Tr. 80:1-4. According to Mr. Smith, he received the disconnection notice on July 11. Tr. 40:2-8. On July 12, Mr. Smith made a payment of $20. Tr. 75:8-13. However, the July 10, 2008, bill for the business account contained a current balance of $35.84, plus a Past Due balance of $415.58. AT&T Ex. 2.

AT&T Illinois' records show that on July 14, Mr. Smith called AT&T Illinois and asked to speak with a supervisor. Tr. 85:17-22. His call was transferred to a manager, Ms. Johnson, who advised Mr. Smith of the scheduled disconnection. Tr. 86:22-87:3. Ms. Johnson asked Mr. Smith how soon he could pay the first half of the unpaid balance, and advised him that AT&T Illinois did not make long-term payment arrangements on business accounts. Tr. 86:16-87:1. Mr. Smith did not make a payment arrangement. Tr. 87:1-2. Nor did Mr. Smith make any other payment on his overdue balance.

The Informal Complaint

Instead, on July 14, Mr. Smith filed an informal complaint with this Commission's Consumer Services Division ("CSD"). Tr. 39:2-21. The CSD sent the complaint to AT&T Illinois via email. *See* Tr. 133:21-143:6. The complaint was received by AT&T witness Shirley Anderson ("Ms. Anderson") (Tr. 140:1-5), who is a customer relations manager at AT&T Illinois and responsible for "oversee[ing] complaints that come in from the Commission and act[ing] as a facilitator to give them to the right department to get resolution for the customer" (Tr. 133:10-16). Upon receiving Mr. Smith's informal complaint on from the CSD on July 16, Ms. Anderson called Mr. Smith and left him a voice mail. Tr. 140:5-7. Ms. Anderson also reviewed the informal complaint, determined that it pertained to efforts to collect money owed to the company, and referred it to an AT&T Illinois collections manager. Tr. 140:8-12.

AT&T Illinois' records show that the collections manager contacted Mr. Smith on the afternoon of July 16, and Mr. Smith stated that he would call back the next afternoon. Tr. 89:11-19. On July 17, Mr. Smith called back and said he had issues with his bill and would call back in thirty minutes. Tr. 90:4-10. When Mr. Smith called back again, he proposed an arrangement under which he would pay $50 per month on his past due balance. Tr. 90:17-91:4.[2] Mr. Smith also complained that AT&T Illinois had not followed normal collection procedures. Tr. 91:1-3. Understanding that Mr. Smith had a billing problem (rather than a problem with the company's collections process), the collections manager referred Mr. Smith's informal complaint to the billing department. Tr. 91:5-13.

A specialist from the billing department called Mr. Smith on the afternoon of July 17. AT&T Illinois advised Mr. Smith that its charges were correct and that it was now attempting to

[2] Given that Mr. Smith's unpaid balance was approximately $400, his proposal meant that it would take at least eight months to get the account current.

collect on Mr. Smith's past due balance because his bankruptcy had been dismissed. Tr. 91:18-92:8. Mr. Smith claimed that AT&T Illinois was not following proper collection procedures and was discriminating against him based on his race. Tr. 92:3-4.

AT&T Illinois contacted Mr. Smith again on Friday, July 18. This call was a three-way call that included Mr. Smith, a specialist from AT&T Illinois' collections department, and a manager from the billing department. *See* Tr. 159:2-8. According to AT&T Illinois' records, Mr. Smith refused to allow the AT&T Illinois representatives to present him with any payment options, and a payment plan was not set up. Tr. 92:12-93:8. AT&T Illinois' representatives concluded that since they could not reach a resolution with Mr. Smith, the informal complaint process had run its course and the complaint was closed. *See* Tr. 105:5-14; Tr. 154:20-155:6; Tr. 157:4-13; *see also* Tr. 153:11-22. At AT&T Illinois, an informal complaint is considered closed once "the manager [who's] handling the complaint" has "contacted the customer," "discussed the issue [raised by the informal complaint] with the customer," and "given [the Customer AT&T Illinois'] final response." Tr. 135:16-22. Since Mr. Smith's informal complaint was no longer pending, the business line was disconnected on July 18.

Ms. Anderson reported this information to the CSD on Monday, July 21, the day she returned from her July 17-18 vacation. Tr. 141:2-142:13. In a follow-up conversation with the Commission's CSD, Ms. Anderson explained that although she transmitted her report to the CSD on July 21, the final actions on Mr. Smith's informal complaint occurred on July 18. Tr. 142:14-144:14. The Counselor from the CSD told Ms. Anderson that he understood why AT&T Illinois "considered [the] issue to be closed on the 18th," and did not indicate that AT&T Illinois had taken any inappropriate action on Mr. Smith's account. Tr. 144:7-14.

The Formal Complaint

Mr. Smith filed a formal complaint with the Commission on August 8, 2008. On the first page of the complaint, Mr. Smith indicated, by marking the appropriate check-boxes on the Commission's pre-printed complaint form, that his informal complaint with the CSD had been closed. *See* Tr. 121:20-122:10. In his formal complaint, Mr. Smith alleged that there was an irregularity in AT&T Illinois' collection procedures, that AT&T Illinois would not agree to a payment arrangement "reflecting fault" on the part of AT&T Illinois, and that AT&T Illinois disconnected his service while his informal complaint was pending. The relief requested in the Complaint is that Mr. Smith's business service be reinstated and that AT&T Illinois be required to pay Mr. Smith actual and punitive damages.

The parties engaged in written discovery. Through this process, it became evident that Mr. Smith's fundamental claim is that AT&T Illinois engaged in racial and gender discrimination by not sending him a disconnection notice during the time in which his bankruptcy case was pending, by not agreeing to a payment plan, and by disconnecting his service after attempts to resolve the informal complaint were unsuccessful.

This Commission conducted an evidentiary hearing on November 20, 2008. Mr. Smith was his own witness, while AT&T Illinois presented two witnesses: Ms. Anderson and Andrea Barry (a manager in the AT&T Credit and Collections Department for business accounts (*see* Tr. 68:1-4)). At the conclusion of the hearing, the Commission ordered briefing by the parties.

ARGUMENT

The Commission should deny Mr. Smith's Complaint. In his Complaint, Mr. Smith broadly alleges that AT&T Illinois did not follow proper processes when it disconnected his business line for failure to pay past-due charges. The evidence in this case shows, however, that Mr. Smith does not dispute: (1) that AT&T Illinois' bills were correct; (2) that he owes the amounts AT&T Illinois has charged; (3) that he received his bills and the notice that his business line would be disconnected within a certain period if he did not pay his bills; and (4) that he has not paid the past-due balance on his now-disconnected account.

Taken as a whole, the record demonstrates that AT&T Illinois properly disconnected Mr. Smith's business line based on his failure to pay past-due charges owed on his account. Mr. Smith therefore is not entitled to have his service re-connected or to an award of damages. Even if Mr. Smith's business line were improperly disconnected, however, he still would not be entitled to damages. This Commission does not have authority to award general and punitive damages of the type Mr. Smith seeks. *See, e.g.*, *Moenning v. Illinois Bell Tel. Co.*, 139 Ill. App. 3d 521, 528 (1st Dist. 1985) ("Plaintiff urges that he was entitled to 'cost and damages,' but the Commission has no general authority to fashion an award of damages[.]"); Order, *Beecham v. AT&T Communications of Illinois, Inc.*, No. 03-0421, 2003 WL 23330855 (ICC Dec. 17, 2003) (slip copy) (holding that the Commission does not have authority to award punitive damages).[3]

Throughout discovery and the evidentiary hearing, Mr. Smith asserted that AT&T Illinois' collection and disconnection actions amounted to discrimination based on race and gender. AT&T Illinois strongly disagrees with these characterizations, which amount to broad accusations unsupported by anything other than Mr. Smith's subjective beliefs about the basis for

[3] In addition, Mr. Smith did not present any evidence about what damages he has allegedly suffered or place a monetary value on any such damages.

AT&T Illinois' conduct. The sufficiency of Mr. Smith's discrimination claims is not at issue though: as this Commission recognized during the evidentiary hearing, the Commission's role in this proceeding is limited. Tr. 147:17-22. The Commission "can look at whether or not" Mr. Smith's business line was "improperly disconnected," but "any other claims are not properly brought before the Illinois Commerce Commission" and cannot be considered. Tr. 147:18-22.[4]

I. AT&T Illinois Properly Refrained From Sending Complainant a Disconnection Notice While his Bankruptcy Petition was Pending.

The Complainant asserts that AT&T Illinois violated Illinois law by refraining from sending him a disconnection notice during the time his bankruptcy petition was pending. In Mr. Smith's view, "when a phone is in existence for 9 months and you haven't received a notice that the service will be terminated unless you pay a certain amount, . . . this is an irregular business procedure that was not my fault." Tr. 42:9-13.

Mr. Smith's understanding of the company's regular business procedure is not supported by the facts of this case or by the law. Here, AT&T Illinois treated Mr. Smith's account like it treats any other account of a customer who has filed for bankruptcy: AT&T Illinois put the account on a "no-treat status" and suspended collection activities on the account (including mailing disconnection notices and making collection calls) until it received notice that the bankruptcy petition had been dismissed. Tr. 77:16-21. Once AT&T Illinois received word that the petition was dismissed, it resumed its normal collection activities. *See* Tr. 78:5-10.

[4] Even if the Commission had authority to consider discrimination claims under some legal theory, the evidence presented in this case would fall far short of showing that AT&T Illinois engaged in discrimination. In the context of employment discrimination, by way of comparison, a "subjective belief" that one is being discriminated against is insufficient to establish disparate treatment under Title VII and Section 1981. *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007). Likewise, in this case Mr. Smith's subjective belief that a "white business customer" would not have been treated the same way Mr. Smith was if he or she owed substantial past-due charges is insufficient to show that AT&T engaged in race or gender discrimination.

Mr. Smith suggests that he was somehow prejudiced by being allowed to accrue nine months worth of unpaid charges without being sent a disconnection notice.[5] The record shows, however, that Mr. Smith knew he was accruing new charges and knew that he was required to pay them. AT&T Illinois continued to send monthly bills to Mr. Smith while his bankruptcy petition was pending. *See* Tr. 77:21-78:2. And Mr. Smith admits that he received those bills (indeed, he produced them in discovery). *See* Tr. 43:4-5; AT&T Ex. 2. Mr. Smith did not need a disconnection notice to inform him of his debt.

AT&T Illinois should not be punished for suspending its collection activities on the account during the pendency of bankruptcy proceedings. There is no Illinois law or regulation that requires a utility to send a disconnection notice to its customer as soon as the customer's account becomes past due. The law does not – and should not – penalize a utility for allowing its customer a grace period before disconnecting the customer's service.

II. AT&T Illinois' Disconnection Notice Complied With Illinois Regulations.

Mr. Smith asserts that he received AT&T Illinois' disconnection notice on July 11, 2008 – only four days before the earliest date on which AT&T Illinois stated it might disconnect service, or July 15, 2008. Tr. 40:2-4. (Service was not actually disconnected until July 18, 2008.) Mr. Smith claims that AT&T Illinois violated Illinois law because he did not receive timely notice of the possible disconnection.

83 Ill. Admin. Code § 735.130(c)(1) provides that a telecommunications customer's "[s]ervice shall not be disconnected until at least five days after delivery of [the disconnection] notice *or eight days after the postmark date on a mailed notice*." (Emphasis added.) AT&T Illinois' disconnection notice and its actions comply with this regulation. The disconnection

[5] In reality, Mr. Smith benefited from AT&T Illinois' conduct during this nine-month period, since he effectively had use of money that otherwise should have been used to pay his telephone bills.

notice (AT&T Ex. 3) is dated July 4, 2008. As AT&T witness Ms. Barry testified, the notice was mailed on the next business day, which was July 7, 2008. Tr. 80:1-4. The notice states that the earliest date on which disconnection may occur was July 15, 2008. AT&T Ex. 3. The July 15 cut-off date is eight days after the date the notice was mailed – and therefore the notice was timely provided according to Section 735.130(c)(1). *See* Tr. 80:8-12. In any event, AT&T Illinois did not disconnect the business line until July 18, 2008, more than ten days after the notice was mailed, and seven days after Mr. Smith received the notice.

III. AT&T Illinois Acted Within Its Authority By Not Entering Into a Deferred Payment Arrangement with the Complainant.

During the evidentiary hearing, Mr. Smith testified that he felt discriminated against because AT&T Illinois would not agree to set up a long-term payment plan for his unpaid balance. *See, e.g.*, Tr. 42:17-43:3. The record shows, however, that AT&T Illinois' policy – which AT&T Illinois communicated to Mr. Smith the first time he called the company about the disconnection notice – is not to make long-term payment arrangements on business accounts like Mr. Smith's. Tr. 86:16-87:1.[6] Instead, AT&T Illinois asked Mr. Smith when he could to pay the first half of his overdue balance. Tr. 86:16-20. But Mr. Smith wanted to pay only $50 per month (Tr. 47:11-13), and did not enter into a payment arrangement with AT&T Illinois (Tr. 87:1-2). Nor did he attempt to make any additional payment toward his overdue balance besides the $20 payment he made on July 12.

AT&T Illinois' actions complied fully with Illinois regulations governing Deferred Payment Agreements. Pursuant to 83 Ill. Admin. Code § 735.80(a), "*nonresidential customers* . . . who are indebted to a company for past due [telephone utility] service, may have the opportunity, *at the discretion of the [telephone utility] company*, to make arrangements with the

[6] To be clear, this is not a case involving residential phone service; it involves only Mr. Smith's business line, which is used solely as a forwarding service.

utility to retire the debt by periodic payments referred to hereinafter as a Deferred Payment Agreement." (Emphasis added.) The plain language of this regulation makes clear that AT&T Illinois is not required to enter into Deferred Payment Agreements with its nonresidential (*i.e.* business) customers. In this case, AT&T Illinois acted properly by following its standard practice of not entering into long-term payment arrangements for business accounts.

IV. AT&T Illinois Properly Disconnected the Complainant's Business Line After His Informal Complaint Was Concluded.

Mr. Smith argues that AT&T Illinois should not have disconnected his business line on July 18, 2008, because his informal complaint was still pending. However, the record shows that Mr. Smith's business line was not disconnected until *after* the informal complaint proceedings were concluded, and that the Commission's CSD recognized that the proceedings had concluded on July 18.

As AT&T Illinois' witnesses testified, representatives of the company engaged in numerous discussions with Mr. Smith after (as well as prior to) receiving his informal complaint from the Commission. For instance: an AT&T Illinois manager talked to Mr. Smith on July 14 and discussed the possible disconnection of service and payment arrangements with Mr. Smith (Tr. 86:10-87:3); an AT&T customer relations manager called Mr. Smith on July 16 about his informal complaint and left a voice message (Tr. 140:5-6); an AT&T Illinois collections manager called Mr. Smith on July 16 (Tr. 89:11-19); Mr. Smith called AT&T Illinois twice on July 17 and was referred to the billing department (Tr. 90:1-10; 90:17-91:13); an AT&T Illinois billing specialist called Mr. Smith on July 17 and discussed the correctness of the charges and AT&T Illinois' treatment of the account during bankruptcy (Tr. 91:18-92:8); and finally, representatives of AT&T Illinois' billing and collection departments called Mr. Smith on November 18, and Mr.

Smith refused to allow the representatives to present him with payment plan options (Tr. 92:12-93:8).

As the record shows, Mr. Smith and AT&T Illinois could not reach agreement on a plan for Mr. Smith to pay off his overdue balance. According to Mr. Smith's testimony, AT&T Illinois requested that Mr. Smith pay half of the overdue amount immediately, and half within the following two or three weeks. Tr. 47:13-18. Mr. Smith wanted to pay only $50 per month on the overdue balance (Tr. 47:11-13) – a proposal under which the overdue balance would not be paid off for at least eight months. Thus, after numerous communications, AT&T Illinois determined that Mr. Smith's informal complaint could not be resolved, and closed the complaint.

As AT&T Illinois' Ms. Anderson explained, AT&T Illinois considers an informal complaint to be closed when "the manager [who's] handling the complaint" has "contacted the customer," "discussed the issue [raised by the informal complaint] with the customer," and "given [the Customer AT&T Illinois'] final response." Tr. 135:16-22. Mr. Smith's informal complaint was closed, on July 18, 2008, when the parties reached an impasse over a payment arrangement. *See* Tr. 105:5-14; Tr. 154:20-155:6; Tr. 157:4-13. AT&T Illinois properly disconnected Mr. Smith's business line after this impasse was reached.

As Ms. Anderson explained at the evidentiary hearing, she informed the CSD on Monday, July 21, that Mr. Smith's informal complaint was closed the prior Friday, July 18. Tr. 142:14-144:14. The Counselor assigned to the complaint called Ms. Anderson shortly after, and she explained to him why AT&T Illinois "considered [the] issue to be closed on the 18th." Tr. 141:2-142:13; Tr. 144:7-14. The Counselor said he understood, and did not suggest that AT&T Illinois had acted inappropriately or should restore Mr. Smith's service. Tr. 144:7-14. Thus, as the Counselor recognized, the informal complaint was no longer pending after Mr. Smith's final call with the billing and collections specialists on July 18. AT&T properly disconnected his business line later that day.

Finally, even if Mr. Smith's informal complaint were still pending at the end of the day on July 18 – which it was not – AT&T would have been entitled to disconnect the business line because Mr. Smith did not comply with the Commission's procedures governing customer disputes. 83 Ill. Admin. Code § 735.130(h) states that service "shall not be discontinued, and shall be restored if discontinued, for any reason which is the subject of a dispute or complaint pursuant to Section 735.190 and/or 735.200 while such dispute or complaint is pending and the complainant has complied with the provisions of these Sections." Thus, in order to prevent service from being disconnected during the pendency of an informal or formal complaint, the customer must comply with Sections 735.190 and 735.200 of the Commission's rules.

Section 735.190 sets forth the duty of the telephone company to make company employees available to discuss and resolve customer disputes. This provision provides that when a customer disputes a bill, service shall not be discontinued if the customer "pays the undisputed portion of the bill" and complies with other requirements. 83 Ill. Admin. Code § 735.190(d)(1)(A). Section 735.200 sets forth "Commission Complaint Procedures." This section states that service shall not be discontinued during the pendency of an informal or formal complaint "so long as the customer has complied with the provisions of Section 735.190(d)" – which includes the requirement that the customer pay the undisputed portion of the bill.

Here, the record shows that Mr. Smith admits that AT&T Illinois' charges were correct (*see* Tr. 43:22-44:3) and that he has not paid the undisputed portions of his bills (*see* AT&T Ex. 3). In addition, as explained above, AT&T Illinois sent Mr. Smith timely notice of the disconnection and had no obligation to enter into a payment arrangement to allow Mr. Smith to pay off his past-due balance over an extended period. Mr. Smith did not pay for his business line for months and has not attempted to pay off the past-due balance he allowed to accrue. AT&T Illinois' decision to shut off service to the business line was entirely proper.

CONCLUSION

For these reasons, AT&T Illinois respectfully requests that the Commission deny Mr. Smith's Complaint in full.

Dated: January 9, 2009

Signed,

AT&T Illinois

By: _/s Nissa J. Imbrock_________________

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CERTIFICATE OF SERVICE

I, Nissa J. Imbrock, an attorney, certify that a copy of the foregoing **Initial Brief of Illinois Bell Telephone Company** was served on the following parties by First Class United States Mail and/or electronic transmission on January 9, 2009.

/s/ Nissa J. Imbrock
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